

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SCOTT MARTIN LAGE, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

SCOTT MARTIN LAGE,

Respondent-Appellant.

UNPUBLISHED

August 8, 2000

No. 212437

Macomb Circuit Court

Family Division

LC No. 97-043605-DL

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

Following an adjudicatory trial, a jury found that respondent, a juvenile, committed an act of first-degree criminal sexual conduct (CSC). MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). After a dispositional hearing, respondent was placed on probation. Respondent appeals as of right. We affirm.

Respondent first claims that the trial court erred in denying his request for psychological evaluations of the alleged victim and the victim's brother. We disagree. Substantive criminal law is applied in a delinquency proceeding because the critical issue is whether a juvenile violated the law. *In re Alton*, 203 Mich App 405, 407; 513 NW2d 162 (1994). However, the procedures applied by the trial court are governed by the court rules specified in MCR 5.901(B).

At trial, respondent requested that the victim, the victim's brother, and the victim's parents all be required to submit to psychological evaluations. A psychological evaluation does not involve a matter that is discoverable as of right. MCR 5.922. Although a psychological examination of a witness may be ordered in certain cases, there must be a compelling reason. *People v Graham*, 173 Mich App 473; 434 NW2d 165 (1988). While respondent now appears to limit his request to the victim, and possibly his brother, the record indicates that respondent failed to identify a compelling need for a psychological examination. Therefore, the trial court did not abuse its discretion in denying respondent's request. See *People v Freeman (After Remand)*, 406 Mich 514; 280 NW2d 446 (1979); *Graham*,

supra. See also *People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995), amended 450 Mich 1212 (1995) (discussing general principles regarding child sexual abuse expert testimony).

Respondent next claims that the trial court erred in granting the prosecution's motion to admit evidence of the victim's prior statements under MRE 803A. We disagree. The corroborative statements admitted under MRE 803A were only those made by the victim to his mother. Considering the facts on which the trial court acted, the court did not abuse its discretion in admitting the victim's statements to his mother. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Respondent next raises several claims pertaining to the sufficiency of the trial evidence and his motion for new trial. We reject respondent's arguments.

Respondent's challenge to the sufficiency of the evidence presents a question of law which is reviewed de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). This Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Respondent was charged with committing an act of sexual penetration with a person under the age of thirteen. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). Sexual penetration, by definition, includes fellatio. MCL 750.520a(1); MSA 28.788(1)(1). Viewed most favorably to the prosecution, the victim's testimony was sufficient to enable the jury to find that respondent engaged in an act of fellatio with the victim, who was under the age of thirteen. Although the prosecution also introduced the victim's corroborative statements under MRE 803A, we note that the victim's testimony did not require corroboration. MCL 750.520h; MSA 28.788(8).

Respondent's motion for a new trial based on the weight of the evidence was subject to the procedures set forth in MCR 5.992. When ruling on respondent's motion, the trial court was required to "state the reasons for its decision on the motion on the record or in writing." MCR 5.992(E). A new trial should not be granted unless the refusal to do so appears inconsistent with substantial justice. *In re Alton*, *supra* at 409. As with such motions in a criminal case, we believe that, absent exceptional circumstances, issues of witness credibility are for the jury and a trial court may not substitute its view on credibility in determining if a new trial should be ordered. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Here, the trial court did not state its reasons for denying respondent's motion for new trial. However, after our review of the record, we believe the trial court properly exercised its discretion in denying respondent's motion. *Lemmon*, *supra* at 642-645; *In re Alton*, *supra* at 409. Moreover, the trial court properly denied respondent's motion based on newly discovered evidence, specifically the evaluation of respondent performed by Leo Niffeler of the Family Consultation and Treatment Services, Inc. Even assuming that Niffeler's opinion was newly discovered, respondent has failed to identify any legally cognizable basis for admitting that opinion at an adjudicatory trial. See *Lukity*, *supra* at 500; *Peterson*, *supra* at 352, 363.

Respondent's remaining two issues warrant little discussion. Respondent's newly raised claim that the prosecutor withheld evidence warrants no relief because respondent has not established the threshold requirement of plain error. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Further, we deem respondent's last issue to be abandoned because respondent has not supported his argument with citations to the record showing the offer of proof made pursuant to MRE 103(a)(2) or the specific ruling of the trial court that he is challenging. A party may not leave it to this Court to search for a factual basis to sustain or reject a position. *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990).

Affirmed.

/s/ Gary R. McDonald

/s/ Hilda R. Gage

/s/ Michael J. Talbot